

1  
2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION

5 UNITED STATES OF AMERICA, ) Case No. 4:18-cv-04788-PJH  
6 )  
7 Plaintiff, )  
8 )  
9 v. ) ~~[PROPOSED]~~ ORDER OF FORECLOSURE  
10 ) AND JUDICIAL SALE  
11 WALTER JAMES KUBON, aka WALTER )  
12 JAMES KUBON JR., VALLY KUBON, )  
STATE OF CALIFORNIA FRANCHISE )  
TAX BOARD )  
Defendants. )

13 Pursuant to the Judgment entered by this Court in favor of the United States of America  
14 and against Walter James Kubon aka Walter James Kubon, Jr. (hereafter "Walter Kubon"),  
15 and Vally Kubon, and the Stipulation between the United States of America and the Franchise  
16 Tax Board ("FTB"), approved and entered by this Court, and pursuant to 28 U.S.C. §§ 2001  
17 and 2002, and 26 U.S.C. §§ 7402 and 7403, the Court hereby orders as follows:

18 1. On May 2, 2019, the Court entered a judgment in favor of the United States and  
19 against Walter Kubon and Vally Kubon, for their federal tax liabilities, described in Paragraphs  
20 1, 2 and 3 of the Judgment, calculated through December 1, 2017, in the total amount of  
21 \$935,276.47, plus such additional statutory additions, including interest, as continue to accrue  
22 pursuant to law until paid in full.

23 2. The subject real property upon which foreclosure is sought is located at 560  
24 Hobie Lane, San Jose, California 95127, and is described in the office of the County Recorder  
25 of Santa Clara County, California, as follows:

26 LOT 13, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "TRACT NO. 5325  
27 PRINCESS HIGHLANDS UNITED NO. 3" WHICH MAP WAS FILED FOR RECORD IN  
28 THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF  
CALIFORNIA, ON JUNE 4, 1973 IN BOOK 324 OF MAPS, AT PAGES 17 AND 18.

1 EXCEPTING THEREFROM THE UNDERGROUND WATER RIGHTS, WITH NO  
2 RIGHT OF SURFACE ENTRY AS GRANTED BY LEWIS T. TOUCHSTONE TO SAN  
3 JOSE WATER WORKS, A CALIFORNIA CORPORATION BY INSTRUMENT DATED  
4 JULY 9, 1973, RECORDED JULY 11, 1973, IN BOOK 0464, PAGE 195, SERIES NO.  
5 4559297, OFFICIAL RECORDS, SANTA CLARA COUNTY, CALIFORNIA.  
6 560 HOBIE LN.  
7 SAN JOSE, CA 95127

8 3. Section 7403 of Title 26 (U.S.C.) entitles the United States to enforce its liens  
9 against the subject property in order to apply the sale proceeds towards the tax liabilities of  
10 Walter Kubon and Vally Kubon.

11 4. The United States' tax liens against the subject property are hereby foreclosed.  
12 The United States Marshal for the Northern District of California, his representative, or an  
13 Internal Revenue Service Property Appraisal and Liquidation Specialist ("PALS") is authorized  
14 and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the subject  
15 property, free and clear of the right, title, and interest of Walter Kubon and Vally Kubon, FTB,  
16 and the United States, and any successors in interest or transferees of those parties. The  
17 United States may choose either the United States Marshal or a PALS to carry out the sale  
18 under this Order of Foreclosure and Judicial Sale and shall make the arrangements for any  
19 sale as set forth in this Order.

20 5. The United States Marshal for the Northern District of California, his  
21 representative, or a PALS representative is authorized to have free access to the subject  
22 property, and to take all actions necessary to preserve the subject property, including, but not  
23 limited to, retaining a locksmith or other person to change or install locks or other security  
24 devices on any part of the subject property, until the deed to the subject property is delivered  
25 to the ultimate purchaser.

26 6. The terms and conditions of the sale shall be:

- 27 a. Except as otherwise stated herein, the sale of the subject property shall be  
28 sold by public auction to the highest bidder, free and clear of all liens and  
interests.

- 1           b. The sale shall be subject to all laws, ordinances, and governmental  
2           regulations (including building and zoning ordinances), affecting the premises,  
3           and easements and restrictions of record, if any.
- 4           c. The sale shall be held at the courthouse of the borough or city in which the  
5           subject property is located, on the subject property's premises, or at any other  
6           place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002.
- 7           d. Notice of the sale shall be published once a week for at least four consecutive  
8           weeks before the sale in at least one newspaper regularly issued and of  
9           general circulation in San Clara County, California, and, at the discretion of  
10          the Marshal, his/her representative, or a PALS, by any other notice deemed  
11          appropriate. State law notice requirements for foreclosures or execution sales  
12          do not apply to this sale under federal law. The notice shall contain a  
13          description of the subject property and shall contain the material terms and  
14          conditions of sale in this Order of Foreclosure and Judicial Sale.
- 15          e. The minimum bid will be set by the Internal Revenue Service for the subject  
16          property. If the minimum bid is not met or exceeded, the Marshal, his or her  
17          representative, or a PALS may, without further permission of this Court, and  
18          under the terms and conditions in this order of sale, hold a new public sale, if  
19          necessary, and reduce the minimum bid or sell to the highest bidder.
- 20          f. The successful bidder for the subject property shall be required to deposit at  
21          the time of the sale with the Marshal, his representative, or a PALS a  
22          minimum of ten percent of the bid, with the deposit to be made by certified or  
23          cashier's check or cash payable to the United States District Court for the  
24          Northern District of California. Before being permitted to bid at the sale,  
25          bidders shall display to the Marshal, his representative, or a PALS proof that  
26          they are able to comply with this requirement. No bids will be received from  
27          any persons who have not presented proof that, if they are the successful  
28

1 bidders, they can make the deposit required by this Order of Foreclosure and  
2 Judicial Sale.

- 3 g. The balance of the purchase price for the subject property is to be paid to the  
4 Marshal, his representative, or a PALS (whichever person is conducting the  
5 sale) within thirty (30) days after the date the bid is accepted, by a certified or  
6 cashier's check payable to the United States District Court for the Northern  
7 District of California. If the successful bidder fails to fulfill this requirement, the  
8 deposit shall be forfeited and shall be applied to cover the expenses of the  
9 sale, including commissions due under 28 U.S.C. § 1921(c), with any amount  
10 remaining to be applied to the tax liabilities of Walter Kubon and Vally Kubon,  
11 at issue herein. The subject property shall be again offered for sale under the  
12 terms and conditions of this Order of Foreclosure and Judicial Sale, or, in the  
13 alternative, sold to the second highest bidder. The United States may bid as a  
14 credit against its judgment without tender of cash.
- 15 h. The sale of the subject property shall be subject to confirmation by this Court.  
16 The Marshal or a PALS shall file a report of sale with the Court, together with  
17 a proposed order of confirmation of sale, within thirty (30) days from the date  
18 of receipt of the balance of the purchase price.
- 19 i. Upon confirmation of the sale, the Marshal or PALS shall promptly execute  
20 and deliver a deed of judicial sale conveying the sold subject property to its  
21 purchaser.
- 22 j. Upon confirmation of the sale, all interests in, liens against, or claims to, the  
23 sold subject property that are held or asserted by all parties to this action or  
24 any successors in interest or transferees of those parties shall attach to the  
25 net proceeds of the sale to the same extent, validity, and priority as they  
26 attached to the subject property. Upon confirmation of the sale, all interests  
27 in, liens against, or claims to, the sold subject property that are held or  
28

1                   asserted by all parties to this action or any successors in interest or  
2                   transferees of those parties shall be discharged and extinguished with respect  
3                   to the subject property only. The sale is ordered pursuant to 28 U.S.C. §  
4                   2001. Redemption rights under state law shall not apply to this sale under  
5                   federal law.

6                   k. Upon confirmation of the sale, the purchaser shall have the Santa Clara  
7                   County Clerk and Recorder record the transfer of the sold subject property  
8                   upon that county's register of title.

9                   7. Until the subject property is sold, Walter Kubon and Vally Kubon, shall take all  
10                  reasonable steps necessary to preserve the subject property (including all buildings,  
11                  improvements, fixtures and appurtenances on the property) in its current condition including,  
12                  without limitation, maintaining a fire and casualty insurance policy. Walter Kubon and Vally  
13                  Kubon shall neither commit waste against the subject properties nor cause nor permit anyone  
14                  else to do so. Walter Kubon and Vally Kubon shall neither do anything that tends to reduce the  
15                  value or marketability of the subject property nor cause or permit anyone else to do so. Walter  
16                  Kubon and Vally Kubon shall not record any instruments, publish any notice, or take any other  
17                  action (such as running newspaper advertisements or posting signs) that may directly or  
18                  indirectly tend to adversely affect the value of the subject property or that may tend to deter or  
19                  discourage potential bidders from participating in the public auction, nor shall they cause or  
20                  permit anyone else to do so. Violation of this paragraph shall be deemed a contempt of court  
21                  and punishable as such.

22                  8. All persons occupying the subject property shall leave and vacate the subject  
23                  property permanently within thirty (30) days of the date of this Order, each taking with them his  
24                  or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances  
25                  to the subject property). If any person fails or refuses to leave and vacate the subject property  
26                  by the time specified in this Order, the United States Marshal's Office, alone, is authorized to  
27                  take whatever action it deems appropriate to remove such person from the premises, whether  
28

1 or not the sale of such subject property is being conducted by a PALS. Specifically, the  
2 Marshal is authorized and directed to take all actions necessary to enter the subject property at  
3 any time of the day or night and evict and eject all unauthorized persons located there,  
4 including Walter Kubon and Vally Kubon and/or any other occupants. To accomplish this and  
5 to otherwise enforce this Order, the United States Marshal shall be authorized to enter the  
6 subject properties and any and all structures and vehicles located thereon, and to use force as  
7 necessary. When the United States Marshal concludes that all unauthorized persons have  
8 vacated, or been evicted from each subject property, he shall relinquish possession and  
9 custody of the subject property to the Internal Revenue Service, or its designee. No person  
10 shall be permitted to return to the subject property and/or remain thereon without the express  
11 written authorization by the United States Marshal and/or the Internal Revenue Service, and/or  
12 the United States Attorney's Office, or their respective representatives and/or designees.  
13 Unauthorized persons who re-enter each subject property during the time this Order is in effect  
14 may be ejected by the United States Marshal without further order of the Court.

15 9. If any person fails or refuses to remove his or her personal property from the  
16 subject property by the time specified herein, the personal property remaining on the subject  
17 property thereafter is deemed forfeited and abandoned, and the United States Marshal's Office  
18 is authorized to remove it and to dispose of it in any manner it deems appropriate, including  
19 sale, in which case the proceeds of the sale are to be applied first to the expenses of sale and  
20 the balance to be paid into the Court for further distribution.

21 10. The Marshal, his representative, or a PALS shall deposit the amount paid by the  
22 purchaser into the registry of the Court. Upon appropriate motion for disbursement or  
23 stipulation of the parties, the Court will disburse the funds in the following partial order of  
24 preference until these expenses and liens are satisfied:

- 25 a. First to the IRS or the Marshal, for allowed costs and expenses of sale,  
26 including any commissions due under 28 U.S.C. § 1921(c) and including an  
27 amount sufficient to cover the costs of any steps taken to secure or maintain  
28

- 1 the relevant Subject Property pending sale and confirmation by the Court;
- 2 b. Second, to the Santa Clara County Treasurer, for any and all liens it may
- 3 have on the subject property for unpaid real property taxes or special
- 4 assessments at the time of the sale; and
- 5 c. Any balance remaining after the above payments shall be held by the Clerk
- 6 until further order of the Court.

7 IT IS SO ORDERED this 2nd day of May, 2019.

8 

10 \_\_\_\_\_  
11 HONORABLE PHYLLIS J. HAMILTON  
12 UNITED STATES DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28